No. 82-2112

In The

Supreme Court of the United States

October Term, 1983

RAMON RUIZ,

Petitioner,

vs.

CRISTO REY COMMUNITY CENTER, CATHOLIC DIOCESE OF LANSING and JAMES SULLIVAN,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Court of Appeals for the Sixth Circuit was correct in reversing the judgment of the District Court and remanding the action with instructions to enter a final judgment in favor of respondents.

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No. 82-2112

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

The respondents, Cristo Rey Community Center, et al., respectfully request that this Court deny the Petition For Writ Of Certiorari, seeking review of the Sixth Circuit's Opinion in this case.

PROCEEDINGS BELOW

The proceedings below are adequately set forth in the Petition, except for the following omission. At the close

of plaintiff's proofs during the trial herein, the defendants made a motion for a directed verdict on the ground that there was no showing of any duty owed by the defendants to the plaintiff. The motion was taken under advisement, and the defendants later renewed the motion, at the close of all proofs.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

Your respondents deny that this case involves the denial of a right protected by the Constitution of the United States, or a violation of a federal statute.

STATEMENT OF THE CASE

The facts of the case are stated fully in the decision of the Court of Appeals (Petitioner's Appendix 4, at 7a-9a).

REASONS WHY WRIT SHOULD BE DENIED

1. **Neither the plaintiff's Complaint and Record of the Proceedings before the Trial Court below, nor Petitioner's Brief before the Sixth Circuit and the Joint Appendix filed therewith, contain factual matters as are now being presented to this Honorable Court.**

The Petition herein is essentially disputing one of the factual bases for the Court of Appeals' action in this case, that:

> The attack occurred inside, or at the immediate threshold, of a doorway into a mobile classroom unit owned and operated by the School District and located on land made available to it by Cristo Rey.

Specifically, the Petition, at page 21, asserts that "uncontradicted evidence in the record establishes that Petitioner was shot outside the mobile classroom unit." This is a clear misstatement of the record herein. First, the Petitioner's own Complaint, at paragraph 3, states as follows:

> "Plaintiff ran to the open doorway of a temporary classroom in an attempt to stop the purse snatcher and when he reached the doorway he was shot in the face with a shotgun."

Even the opinion of the Trial Court below denying defendants' motion for judgment notwithstanding the verdict included "the fact that he was standing in the doorway of a mobile classroom building owned by the Lansing School District. . . ." Moreover, the Petitioner's Brief before the Sixth Circuit phrased these critical facts as follows:

> "He ran to the door to pursue the purse-snatcher and upon opening the door was shot in the face and torso

> with a shotgun. All he could recall was opening the door, looking into the darkness and seeing a bright flash." (Plaintiff-Appellee's Brief On Appeal, p. 3).

The only evidence, other than Petitioner's own self-serving statements, as to where he was standing when he was shot, does *not* support his present contention that it was outside the Lansing School District's classroom building. Rather, the testimony of Mr. Mathieson, the teacher involved, supports the finding on this point made both by the Trial Court and the Court of Appeals:

> "I looked to the door, and I saw—I can remember—all I can remember is seeing Ramon turning around, and he was covered with blood."

This testimony was contained in Mr. Mathieson's deposition which was read to the jury, and also properly excerpted and contained in the Joint Appendix filed with the Court of Appeals. The Petition filed with this Court, however, repeatedly relies partly upon evidence not presented in proceedings below: the deposition testimony of Mr. Ruiz, which was not read to the jury at the trial, and which was not included in the Joint Appendix filed with the Court of Appeals. Thus, Petitioner's appeal to this Court is partly relying upon purported evidence which had not been considered by either Court below; which, by itself, is sufficient reason for the denial of the writ.

2. The Opinion below was accurate and correct, and the fair result was reached.

The issue in the present case involves the application of various decisions of the Michigan Supreme Court and Court of Appeals to the facts involved. Basically, the Court of Appeals found that the Lansing School District,

and not your respondent herein, Cristo Rey, assumed the responsibility for the safety of pupils inside the mobile unit and in those areas immediately contiguous to and surrounding it, and was therefore also charged with the legal duty to take necessary steps to protect them. The Court arrived at this conclusion by carefully analyzing the same two cases which are primarily being relied upon by the Petitioner herein: *Sampson v. Saginaw Professional Building, Inc.*, 393 Mich. 393, 224 N. W. 2d 843 (1975), and *Johnston v. Harris*, 387 Mich. 569, 198 N. W. 2d 409 (1972). Both of those cases dealt with situations wherein tenants or employees of tenants of a particular landlord were injured by the assaults of third persons, a legal issue which has been faced by Courts in many jurisdictions. The Court of Appeals herein, after reviewing those cases, found the Michigan law to be that the existence or nonexistence of a legal duty to act is ascertained through the examination of the existing relationship between the parties. Furthermore, the relationship between the respondent and petitioner herein was one as between a land owner to invitee, charging the former with a legal duty extending only to those areas over which it retained control. Furthermore, the critical operative fact below, as the Court of Appeals found, was that the petitioner was injured in an area over which the respondent did not have control; rather, the care, and the duty, was in the Lansing School District.

The following points are worth noting. First, it is worthy of note that, while the plaintiffs in those two cases did prevail, they were tenants or employees of tenants of the landlords involved, and not, as in the case at bar, invitees. Furthermore, the Michigan Supreme Court, in the *Sampson* case, expressly reserved the following question:

> "Whether or not the landlord retains any responsibility for actions which occur within the confines of the now-leased premises is not now before this court and need not be answered. It would appear, however, that he would not retain any responsibility for such actions except in the most unusual circumstances." 393 Mich. at 407.

The correctness of the Sixth Circuit's application of these two cases is reinforced by a recent opinion of the Michigan Court of Appeals dealing with premises liability for torts of third parties. See *Escobar v. Brent General Hospital,* 106 Mich. App. 828, 308 N. W. 2d 691 (1981). In that case, the Michigan Court of Appeals affirmed the lower court's grant of defendant's motion for summary judgment on the ground that the Complaint failed to state a cause of action because there was no legal duty upon the defendant to protect against the kind of assault involved in that case. The Court of Appeals carefully analyzed the facts therein. The plaintiffs resided in a house leased to them by the defendant, which was adjacent to defendant's hospital facility. When they returned home one evening from shopping, they parked their car in the driveway adjacent to the home. An assailant approached Mr. Escobar in the driveway and forced him into the house; once inside, he assaulted them, attempted forceful sexual acts, and then, in a struggle, shot Mrs. Escobar. He then fled and was not caught.

The plaintiffs alleged that the area was one of high crime, with reported robberies and assaults committed in the area right around the time of this attack, and other houses also leased by the hospital had also been subjected to some of the same sorts of crimes at about the same time as this incident.

The Court of Appeals then analyzed the *Johnston* and *Sampson* cases, as did the Court herein, as to the propriety of placing a duty of care upon landlords to protect their tenants from potential criminal activities. The Court noted that the *Johnston* case dealt with the liability of a landlord to a tenant who was injured by criminal activities of a third person, within the common areas of a multiple dwelling unit. It also analyzed the *Sampson* case, which imposed the duty of care, again, upon the landlord of a commercial office building where a tenant's employee was injured as a result of criminal action by a third party. The Court also noted, both in quoting from *Sampson* and other cases, that it was the responsibility of the Courts involved to decide whether a duty existed in the type of relationships between the parties. Finally, the Court also noted the substantial disagreement in case law, as noted in commentaries as to whether a duty should be imposed on landlords in cases such as that involved, but noted that they were unable to find any prior decision which would impose such a duty on a landlord in a situation similar to that of the defendant in the case at bar.

In distinguishing the aforementioned cases, as well as others, the Court of Appeals stressed that cases where liability was found involved a relationship of landlord and injured tenant, in that the assaults took place in the common areas of those buildings. Second, the Court also noted that the facts in the case before them showed that the assailant's crimes actually commenced from outside the plaintiffs' home. Finally, the Court also noted the lack of suggestion that the house was improperly maintained nor that it was not equipped with outside light sufficient for the type of facility it was, and that the Court could

see no duty on the landlord to provide continuous security personnel as the plaintiffs alleged would be required.

Thus, the decision by the Sixth Circuit Court of Appeals herein is consistent with decisions of the Michigan Supreme Court and the Michigan Court of Appeals.

The result is also the fair one. The injuries sustained by petitioner herein are certainly unfortunate. However, as the Court of Appeals noted, the control of the area in which he was actually injured, and the responsibility for security, was in the hands of the Lansing School District, and not the respondent. Furthermore, respondent Cristo Rey Community Center was merely the title holder of land—which it graciously provided to the Lansing School District for its use, free of charge. As Professor Prosser noted, in analyzing situations in which a duty might be placed upon individuals to protect others against the torts of third parties:

> "For the most part, such a duty has been imposed where the relation is one of some actual or potential economic advantage to the defendant, and the expected benefit justifies the requirement of special obligations." Prosser: The Law of Torts (4th ed.) p. 339.

It is also worthy of note that the record which was presented to the Trial Court and Court of Appeals below shows that the petitioner was not exactly without reward. In fact, at the trial below, as the Joint Appendix excerpts indicate, he was provided with a scholarship to pay his tuition at Michigan State University from an anonymous donor, and a program was initiated to get money to pay his medical bills and expenses, and the money that was left over was given to him when he went back to Mexico. In addition, he had been given a new car, but after two

years more of school, he left, and sold the car to buy a tractor (Tr. 163-165, 170-173).

3. The issue involved herein is not sufficiently important to warrant the Court's attention, and because of the unique facts of this case and the Court of Appeals' own limitation that its opinion is "not recommended for full-text publication," the decision herein has little, if any impact on the development of law.

Even though the respondent contends that the Court of Appeals faithfully applied the decisions of Michigan courts in arriving at its conclusions, and that the cases relied upon by the petitioner are distinguishable both as to their facts, and principles contained therein, the respondent further asserts that the issue involved herein is not sufficiently important to warrant this Court's attention, and that the unusual facts of this case, coupled with the Court of Appeals' own limitation that its Opinion is "not recommended for full-text publication," results in the decision having little effect on the development of the law. This is a tort case which could just as easily have been litigated in the Courts of the State of Michigan. The results turn on the appreciation of a few, critical facts, and even petitioner does not claim that it is a case of first impression in Michigan law. To the contrary, both petitioner and respondent, as well as the two Courts below, have relied upon the same leading cases decided by Michigan courts. No amount of rhetoric can convert it into a case warranting review on certiorari.

The Petition herein, however, attempts to do that by claiming that the action by the Court of Appeals amounts to a deprivation of plaintiff's constitutional right to a jury, citing *Bird v. Blue Ridge Rural Electric Cooperative,*

Inc., 356 U. S. 525 (1958). That case is easily distinguishable on its facts, since the trial court struck a defense asserted by the petitioner therein, without hearing any evidence on the matter. In the case at bar, of course, the trial judge allowed the trial to go to its conclusion, after taking defendant Cristo Rey's motion for a directed verdict under advisement. Furthermore, this Honorable Court also noted the following general proposition:

> "We ordinarily accept the interpretation of local law by the Court of Appeals, cf. *Ragan v. Merchants Transfer Co.*, 337 U. S. 530, 534, and do so readily here since neither party now disputes the interpretation." 356 U. S. at 530.

In *Ragan*, this Court again deferred to the determination of local law by the Court of Appeals below, citing *Huddleston v. Dwyer*, 322 U. S. 232 (1943). 337 U. S. at 534. *Huddleston* provides an even further articulation of the deference paid to the review provided by intermediate federal appellate courts:

> "The decision of the highest court of a state on matters of state law are in general conclusive upon us, and ordinarily we accept and therefore do not review, save in exceptional cases, the considered determination of questions of state law by the intermediate federal appellate courts. (Citation omitted). When we are called upon to decide them, the expression of the views of the judges of those courts, who are familiar with the intricacies and trends of local law and practice, if not indispensable, is at least a highly desirable and important aid in our determination of state law questions. This court will not ordinarily decide them without that aid where they may conveniently first be decided by the Court whose judgment we are called upon to review. (Citations omitted)." 322 U. S. at 237.

Finally, perhaps an even more forceful statement pertaining to review by this Honorable Court was contained

in Mr. Justice Frankfurter's dissenting opinion on a petition for writ of certiorari in *Gibson v. Philips Petroleum Co.*, 352 U. S. 874 (1956). He forcefully pointed out that this Honorable Court is not a Court to determine the local law of the various states, and that error on the part of a Court of Appeals in applying local law in any one of them involves injustice to a particular litigant, whether it is a personal injury case or any other case. He further pointed out that the Courts of Appeals were created to relieve the Supreme Court of its burden of review, and that the Supreme Court itself has emphasized it in the following manner:

> "[B]y stating again and again that it does not sit to correct errors, even a plain error, in a particular case, especially when involving a local controversy of this Court. The Supreme Court of the United States is designed for important questions of general significance in the construction of federal law and in the adjustment of the serious controversies that arise inevitably and in increasing measure in a federal system like ours. These questions are more than sufficient in volume and difficulty to engage all the energy and thought possessed by the court; it should not be diverted by the correction of errors in local controversies turning on particular circumstances." 352 U. S. at 876.

The decision by the Sixth Circuit herein is limited to the unique facts involved in the case at bar. However, there is an even more obvious limitation on it, which is that court's own treatment of its decision, which carries the following caveat on it:

> "NOT RECOMMENDED FOR FULL-TEXT PUBLICATION.
>
> "Sixth Circuit Rule 24 limits citation to specific situations. Please see Rule 24 before citing in a proceed-

ing in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court. This notice is to be *prominently* displayed if this decision is reproduced."

Sixth Circuit Rule 24, in pertinent part, provides as follows:

"(b) Citation of Unpublished Decisions. Citation of unpublished decisions by counsel in briefs and oral arguments in this court and in the district courts within this circuit is disfavored, except for the purpose of establishing res judicata, estoppel, or the law of the case."

Thus, the Court of Appeals below carefully limited its decision to the facts of the case involved, and that Court's warning as to this limitation should have been prominently displayed on Appending 4 of the Petition, but it was not.

———o———

CONCLUSION

Since the facts which were before both the trial court and the Sixth Circuit Court of Appeals, and the decisions of the Michigan Supreme Court and Court of Appeals as applied to them support the conclusion arrived at by the latter forum, and since the limited applicability of that Court's decision herein does not warrant the intention of this Honorable Court, your respondent prays that the writ of certiorari be denied.

Respectfully submitted,

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APPENDIX 1

(Filed: September 24, 1981)

SPECIAL VERDICT FORM

1. Was the criminal assault which occurred in this case foreseeable as that term was defined to you by the court?

Yes..X.. No.....

If your answer is no, do not answer any further questions.

2. Were the defendants negligent in failing to take reasonable precautions to protect the plaintiff from a criminal assault?

Yes..X.. No.....

If your answer is no, do not answer any further questions.

3. Were the defendants a proximate cause of the injuries suffered by the plaintiff?

Yes..X.. No.....

If your answer is no, do not answer any further questions.

4. We find that the plaintiff has suffered damages in the total amount of $117,000.

5. Did negligence on the part of the plaintiff, if any, contribute to his own injuries?

Yes..... No..X..

6. Using 100% as the total combined negligence which proximately caused the injury or damage to the plaintiff, what percentage of such negligence is attributable to the plaintiff?

0% percent

The Court will reduce the total amount of plaintiff's damages as found by the jury in Question #4, by the percentage of negligence attributable to plaintiff, if any, from Question #6. The remainder will be the amount which plaintiff is entitled to recover.

Signed: Nick Unger
Foreperson

Dated: September 24, 1981

APPENDIX 2

(Filed: October 26, 1981)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

No. G 74-350 CA

RAMON RUIZ,

Plaintiff,

vs.

CRISTO REY COMMUNITY CENTER,

Defendant.

OPINION ON DEFENDANT'S MOTION FOR J.N.O.V.

Following a jury verdict in favor of the plaintiff, the defendant has moved for judgment notwithstanding the verdict on the ground that the defendant owed no duty to protect the plaintiff from the criminal acts of third persons. The motion for J.N.O.V. must be denied if the evidence before the jury, read in a light most favorable to the plaintiff, was sufficient to support a verdict in favor of the plaintiff.

There was no dispute, and the jury was so instructed, that the plaintiff was an invitee of the defendant. He was invited onto the property for an educational purpose for which the property was held open to the public. The fact that he was standing in the doorway of a mobile classroom building owned by the Lansing School District is irrelevant to his status vis-a-vis the defendant:

> Invitees of the tenant are regarded as being invitees of the owner while on passageways which invitees of the tenant have a right to use and which are under the owner's control.

Siegel v. Detroit Ice & Fuel Co., 324 Mich. 205 (1949); *Lipsitz v. Schechter*, 377 Mich. 688 (1966). Although the Lansing School District did not pay rent, the educational programs operated by the School District on Cristo Rey property were publicized by the Cristo Rey Center and promoted and adopted as part of Cristo Rey's overall social-service program. Under these circumstances, the plaintiff was an invitee of the Center, and in fact, the defendant did not object to the jury being so instructed.

The defendant, under Michigan law, owed an invitee, such as the plaintiff, a duty to take reasonable precautions to protect the plaintiff from foreseeable criminal attacks by third persons.

> There are, however, situations in which the actor, as a reasonable man, is required to anticipate and guard against the intentional, or even criminal misconduct of others. In general, these situations arise where the actor is under a special responsibility toward the one who suffers the harms, which includes the duty to protect him against such intentional misconduct . . . Among such relations are those of a carrier and passenger, innkeeper and guest, employer and employee, *possessor of land and invitee*, and bailee and bailor.

[emphasis added]. *Samson v. Saginaw Professional Building, Inc.*, 393 Mich. 393, 224 N. W. 2d 843 (1975), quoting Restatement of Torts 2d, Comment 3, p. 90-91, § 302B.

Given that a duty to take reasonable precautions existed in this case, whether that duty was breached is a jury question.

> We prefer to recognize and uphold that duty in these types of relationships, leaving it to the jury to determine the ultimate questions which may impose liability, those of foreseeability, reasonableness and proximate cause.

Samson, supra.

There was sufficient evidence from which the jury could decide that the criminal act in this case was foreseeable. The assault was precipitated by a breaking and entering and purse-snatching. There was evidence that numerous such occurrences had taken place in the three years prior to the incident in this case. The Cristo Rey Center had installed an alarm system, which indicated its knowledge of the problem.

There was evidence sufficient to support a jury conclusion that the defendant failed to take reasonable precautions. The evidence showed that no special precautions were taken to protect those persons attending class in the mobile classroom building. Most significantly, the defendant did not warn the School District, the classroom teacher, or the students themselves of a crime problem of which the defendant was aware.

The jury could also have reasonably concluded that the defendant's failure to warn or take other precautions was a proximate cause of the attack which injured the

plaintiff. The failure to warn may have created a situation, i. e., an unlocked door with valuable possessions placed, unguarded, nearby, which significantly increased the likelihood of the commission of a crime and, consequently, an assault during such commission. Where a defendant's conduct has enhanced the likelihood of a foreseeable criminal act, that conduct may be considered a proximate cause of the criminal act. *Johnston v. Harris,* 387 Mich. 569, 198 N. W. 2d 409 (1972).

The defendant relies principally on the Michigan Court of Appeals' case of *Escobar v. Brent General Hospital,* — Mich. App. — (1980), decided 6-4-81. However, the Escobar case, relying as it does on the allegedly "unforeseeable" nature of criminal conduct, is simply at odds with the Michigan Supreme Court in *Samson.* The issue of foreseeability, which is the crucial issue in every case of this nature (see discussion in *Johnston v. Harris,* supra), is a question of fact for the jury under *Samson.* Criminal acts are not, as a matter of law, unforeseeable, according to the Michigan Supreme Court. Given a conflict between the Michigan Supreme Court and one panel of the Michigan Court of Appeals, this court is governed by the Supreme Court decision in *Samson.*

For the foregoing reasons, the defendant's motion for J.N.O.V. must be, and hereby is, DENIED.

/s/ WENDELL A. MILES

Wendell A. Miles
Chief Judge

Dated: October 23, 1981

APPENDIX 3

(Filed: September 29, 1981)

JUDGMENT ON JURY VERDICT

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RAMON RUIZ,

vs.

Civil Action File
No. G74-350 CA

CRISTO REY COMMUNITY CENTER
JAMES SULLIVAN

JUDGMENT

This action came on for trial before the Court and a jury, Honorable Wendell A. Miles Chief, United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict.

It is Ordered and Adjudged that the plaintiff, Ramon Ruiz, recover of the defendants Cristo Rey Community Center and James Sullivan, the sum of One Hundred Seventeen Thousand and no/100 ($117,000.00) Dollars, with interest thereon as provided by law, and his costs of action.

Dated at Grand Rapids, Mich., this 29th day of Sept., 1981.

Gerald H. Liefer, Clerk

/s/ .....

Chief Deputy Clerk of Court

APPENDIX 4

(Filed: February 28, 1983)

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

Sixth Circuit Rule 24 limits citation to specific situations. Please see Rule 24 before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court. This notice is to be *prominently* displayed if this decision is reproduced.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RAMON RUIZ,
Plaintiff-Appellee

vs. No. 81-1751

CRISTO REY COMMUNITY CENTER, et al.
Defendants-Appellants

ORDER

BEFORE: MARTIN and KRUPANSKY, Circuit Judges; and PECK, Senior Circuit Judge

Ramon Ruiz (Ruiz) initiated this negligence diversity action against the Lansing School District (School District) and Cristo Rey Community Center of the Catholic Diocese of Lansing (Cristo Rey) for damages to compensate him for injuries resulting from a criminal attack upon him by a third party. The attack occurred inside, or at the immediate threshhold, of a doorway into a mobile classroom unit owned and operated by the School

District and located on land made available to it by Cristo Rey. The School District's motion for summary judgment, predicated upon sovereign immunity, was granted by the district court. Subsequent to a five-day jury trial a verdict was returned in favor of Ruiz and judgment was entered thereon. Cristo Rey moved for judgment notwithstanding the verdict (JNOV), asserting that it owed no legal duty to protect Ruiz from the unforeseeable criminal acts of third persons. Cristo Rey appeals from the Order of the district court denying its motion for JNOV.

The evidence presented at trial disclosed the following operative facts. Cristo Rey Community Center was defined by its Executive Director, Tony Benevides (Benevides), as a social service agency that implemented various social programs for the Hispanic speaking community in Lansing, Michigan. Illustrative of the services promoted by Cristo Rey are the following: a celebration of daily mass, senior citizens programs, a nutritional program providing approximately 7,000 meals a year, transportation, recreation for children and other age groups, and a medical clinic. The Michigan State University Department of Medicine also provided services at Cristo Rey. The United Migrant Opportunities, a subdivision of HEW, distributed food stamps from the Center. Title to the building and real estate upon which Cristo Rey implemented the described social services was in the Roman Catholic Bishop of the Lansing Diocese.

At some time in the late 1960s, the Lansing School District inaugurated English classes for Hispanics at Cristo Rey. When the English language classes became too large for the School District's existing facility, it

placed, with Cristo Rey's consent, a mobile classroom unit which it owned onto the Cristo Rey property.

Registration for the English language classes was conducted at the Education Center operated by the Lansing School District and located at 500 West Lenawee. Cristo Rey did not participate in the registration process. Cristo Rey did, however, from time to time, include announcements of the availability of the classes in its monthly newsletter. Benevides had informed Ruiz of the availability of the language classes.

On November 1, 1973, plaintiff Ruiz was attending an English class which was being conducted by the School in its mobile classroom situated on the Cristo Rey property. One male instructor and approximately 8 other students, all female, were present. The students were gathered around a table. At approximately 8 p.m., by which time darkness had settled, Ruiz observed a woman enter the unit and snatch a handbag from a table and hurriedly leave the premises. He gave pursuit and as he opened the door he was confronted by a bright flash of light from the discharge of a shotgun. Ruiz, struck by the charge, staggered to the rear of the classroom and collapsed under a table. Medical attention was summoned. Ruiz' injuries included the loss of sight in one eye.

Ruiz predicated his cause of action upon negligence, charging Cristo Rey, as the owner of land, with a duty to render its premises reasonably safe for the use of invitees. Particularly, Ruiz averred that an unreasonable risk of harm from criminal activity was foreseeable and that Cristo Rey had breached its duty to exercise reasonable care to adequately protect invitees of the School

District and that such breach of duty proximately caused his injury.

The threshhold inquiry on appeal is whether Cristo Rey was charged wth a legal duty to reasonably protect Ruiz from criminal acts of third persons. In *Samson v. Saginaw Professional Building, Inc.*, 393 Mich. 383, 224 N. W. 2d 843 (S. C. Mich. 1975), the Supreme Court of Michigan held that no negligence shall arise unless a legal *duty* to act exists. The existence or non-existence of a legal duty to act is ascertained through examination of the existing *relationship* between the parties. The foreseeability of a particular occurrence (*e. g.* criminal attack) is *not* a factor in determining the existence of such legal duty. Rather, foreseeability, like reasonableness and proximate cause, are inquiries deferred to the factfinder. *Samson, supra,* 224 N. W. 2d at 850. The relationship between Cristo Rey and Ruiz as land owner to invitee charged the former with a legal duty to render certain areas reasonably safe. However, Cristo Rey's legal duty extended *only* to those areas over which it retained control. *Samson, supra,* 224 N. W. 2d at 849. *See also: Johnston v. Harris,* 387 Mich. 569, 198 N. W. 2d 409 (S. C. Mich. 1972). Although the agreement between Cristo Rey and the School District whereby the latter was authorized to utilize the former's land had not been reduced to writing, the relationship between Cristo Rey and the School District compels the legal conclusion that the School District, and not Cristo Rey, was charged with the responsibility of rendering that area immediately adjacent to and surrounding the mobile class unit reasonably safe. It is conceded that the School District owned the mobile class unit here in issue which was under its

exclusive control. The School District alone (1) provided all instructors, (2) supplied all utilities, (3) provided its own independent telephone service; (4) implemented its own custodial services and (5) installed its own restroom separate from Cristo Rey's facilities. It is obvious that Cristo Rey transferred to the School District not only the use of the land upon which the mobile unit was located, but also all areas of egress and ingress which could reasonably be anticipated to have been utilized by individuals frequenting the facility. The School District, and not Cristo Rey, assumed responsibility for the safety of pupils both inside the mobile unit and in those areas immediately contiguous to and surrounding the unit. The School District was charged with the legal duty to maintain and light these areas and/or implemented other reasonable measures of security.

Upon adjudging that Cristo Rey had no legal duty to render the area inside of and immediately contiguous to the mobile class unit reasonably safe for invitees of the School District, it is unnecessary for this Court to address the sufficiency of evidence supporting the jury finding that the criminal attack was foreseeable, that Cristo Rey failed to reasonably protect Ruiz from such a criminal attack, and that such failure proximately caused plaintiff's injuries.

The judgment of the district court is REVERSED, and this action is REMANDED with instructions to enter final judgment in favor of Cristo Rey.

ENTERED BY ORDER OF THE COURT
JOHN P. HEHMAN, CLERK
/s/ JOHN P. HEHMAN

APPENDIX 5

(Filed: March 31, 1983)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RAMON RUIZ,
Plaintiff-Appellee
vs. No. 81-1751

CRISTO REY COMMUNITY CENTER, et al.
Defendants-Appellants

ORDER

BEFORE: MARTIN and KRUPANSKY, Circuit Judges, and PECK, Senior Circuit Judge

Upon due consideration, Ramon Ruiz' instant motion for rehearing is hereby DENIED.

ENTERED BY ORDER OF THE COURT
/s/ JOHN P. HEHMAN
Clerk

APPENDIX 6

(Filed: May 2, 1983)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RAMON RUIZ,
Plaintiff

vs.

File No.
G74-350 CA 5

CRISTO REY COMMUNITY CENTER, et al.
Defendants

JUDGMENT ON REMAND

The United States Court of Appeals for the Sixth Circuit having reversed this court's denial of the defendant's motion for judgment n.o.v. and remanded the action; now, therefore,

IT IS HEREBY ORDERED that the judgment of this court entered on September 29, 1982, be vacated;

IT IS FURTHER ORDERED AND ADJUDGED that a judgment n.o.v. be entered and that the plaintiff take nothing.

ENTERED BY ORDER OF THE COURT

/s/ GERALD H. LIEFER
Gerald H. Liefer, Clerk

Date: May 2, 1983.

APPENDIX 7

Rule 24

RULES OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PUBLICATION OF DECISIONS

(a) Criteria for Publication.

(1) It is the policy of the court that the following criteria shall be considered by panels in determining whether decisions will be designated for publication in Federal Reporter:

(i) whether it establishes a new rule of law, or alters or modifies an existing rule of law, or applies an established rule to a novel fact situation;

(ii) whether it creates or resolves a conflict of authority either within the circuit or between this circuit and another;

(iii) whether it discusses a legal or factual issue of continuing public interest;

(iv) whether it is accompanied by a concurring or dissenting opinion;

(v) whether it reverses the decision below, unless:

(a) the reversal is caused by an intervening change in law or fact, or,

(b) the reversal is a remand (without further) comment) to the district court of a case reversed or remanded by the Supreme Court;

(vi) whether it addresses a lower court of administrative agency decision that has been published; or,

(vii) whether it is a decision which has been reviewed by the United States Supreme Court.

(2) Designation for Publication. There shall be a presumption in favor of publication of signed and per curiam opinions.[1] Such opinions shall be designated for publication unless a majority of the panel deciding the case determines otherwise upon consideration of the foregoing criteria. An order shall not be designated for publication unless a member of the panel so requests.

(b) Citation of Unpublished Decisions. Citation of unpublished decisions by counsel in briefs and oral arguments in this court and in the district courts within this circuit is disfavored, except for the purpose of establishing res judicata, estoppel, or the law of the case.

If counsel believes, nevertheless, that an unpublished disposition has precedential value in relation to a material issue in a case and that there is no published opinion that would serve as well, such decision may be cited if counsel serves a copy thereof on all other parties in the case and on the court. Such service may be accomplished by including a copy of the decision in an addendum to the brief.

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[1]A signed opinion is one in which the author's name appears at the beginning of the opinion.